by the authorised exponents of the requirements of the Act and the statutory custodians of the register. If, in violation of the plain words of the Act, a money-lender trades without being registered at all, or being registered trades in another name, he is very properly left to the mercy of any one who chooses to attack him, and his contracts are rightly avoided. But if he is registered by the Commissioners and registered improperly, the fault does not lie with him alone. The Commissioners are at least equally to blame. It was said that a money-lender registers himself; the Commissioners have to accept the entry proposed, if it is not in contravention of their published regulations. I do not think that is what the Act meant. The Commissioners have important duties cast upon them. In a great measure the execution of the Act is placed in their hands. Their regulations ought to be clear and explicit, and the forms of application for registration issued by them ought not to afford room for evasion.

By a wise foresight, or a fortunate chance, the Act has not left persons entirely unprotected who may be misled or not guided aright by the directions issued by the Commissioners. In the case of an alleged infringement of sub-section 1(a), the sub-section with which the Commissioners are mainly concerned, no prosecution can be instituted except with the consent of the law officers. No such provision is made with regard to (b) or (c). This seems to me to shew that what the Act meant to strike at in (c) was the case of a person actually registered by the Commissioners contracting otherwise than in his registered name, and that, so long as his name remains on the register, his contracts in that name are not to be held void, or his action in making contracts in that name punishable by fine and imprisonment.

I venture to hope that the Commissioners of Inland Revenue will issue regulations which may be a guide to persons proposing to register, and not an occasion for stumbling, and that they will repair the error they have committed by removing, on proper notice, names wrongly registered, and taking care in future that, so far as in them lies, the requirements of the Act shall be complied with.

In this way, and by these means, the Act, it may be hoped, will regain power, and at the same time command respect. As administered by the Board of Inland Revenue it loses half its virtue. As construed by the Court of Appeal it leads to a result which one of the learned judges of that court describes as 'dishonest and demoralizing.'

I think the action should be dismissed with costs."

Lord Dunedin in the same case said at page 527:

"The upshot of the matter seems to me that each statute must be judged of by itself. Now in the present statute we find a direct prohibition as to contracts in section 2(1)(c). 'A moneylender shall not enter into any agreement in the course of his business as a moneylender with respect to the advance and repayment of money, or take any security for money in the course of his business as a moneylender otherwise than in his registered name.'

It seems to me that express enactment shuts the door to further implication. *'Expressio unius est exclusio alterius.'*

I come therefore to the conclusion that the contract here was only void if it was struck at by the prohibition in section 2(1)(c). Was it so struck at? It is said that because we hold the registration to have been an improper registration therefore it was no registration. I do not think so. I think registered name means *de facto* registered name, and that it would be contrary to all justice to penalize the appellants for what was really a mistake of the Inland Revenue.

The appellants had a registered name, and I think the statute sought only to prohibit dealings in a name which was not registered at all."

We should adopt the line taken in that case. By accepting the contention of the appellant, we would in effect be penalising the respondent for defective draftsmanship of our Ordinance.

Our Ordinance by its provisions does not enable the moneylender by his licence to do any act except in accordance with section 6(1)(a) "in his *true name*". This was done here. Further the provisions of the Land Code did not permit registration in the name of a partnership or firm (see *Ching Chen Hong & Anor.* v. *Hameed & Ors.*[11]). Sections 10 and 47 did not permit the charge in this case to be taken in the "authorised name". As her partner, Chockalingam was a non-resident and hence disqualified on that ground by the provisions of section 5(2), the charge could only be taken in the name of the respondent herself as chargee, and it is impossible, in my opinion, to say that, by so doing she was carrying on business otherwise than in the authorised firm name and on the firm's account; on this point the books provided unimpeachable evidence of the truth.

I am of opinion that it was not possible for the respondent to comply with section 8(b) and (c) in the absence of provision in the Ordinance for an "authorised name". There was compliance however with the Ordinance in that she held a licence to carry on money-lending business in her *true name* and with the Land Code in respect of the registration of the charges in her own name.

I would therefore dismiss the appeal, allow the respondent's cross-appeal and set aside the order of the court below. I would give the respondent all the reliefs prayed for in Selangor Originating Summons No. 198/64, with costs both here and in the court below. The deposit of the appellant will be paid out to respondent to account of her taxed costs.

Judgement of trial judge confirmed with amendment.

Solicitors: *Segaram & Co.; V. K. Palasuntharam.*

P. RAMAN v. CHAIRMAN, BOARD OF GOVERNORS, SEKOLAH RENDAH JENIS KEBANGSAAN GOPENG & ANOR.

[F.C. (Azmi L.P., Gill and Ong Hock Sim F.JJ.) October 6, 1973]

[Ipoh — Federal Court Civil Appeal No. 141 of 1972]

Industrial Law — Whether a dismissed employee who had unsuccessfully appealed to the Minister for relief can seek a remedy in an ordinary court of law — Industrial Relations Act, 1967, s. 16A.

The appellant had his services as sweeper cum watchman at a school terminated by the Board of Governors of the School. He made representations to the Minister for Labour under section 16A of the Industrial Relations Act, 1967 but his representations were rejected. The appellant thereupon applied to the High Court for a declaration that his dismissal was wrongful. The learned trial judge held that as the matter had been considered and rejected by the Minister under section 16A of the Industrial Relations Act 1967, the court was precluded from dealing with the matter. Section 16A(5) of the Industrial Relations Act 1967 provides that the decision of the Minister on any representations made under the section "shall be final and conclusive and shall not be challenged in any court or in a court established under this Act."

Held: the Minister had made a decision for the purpose of subsection (5) of section 16A of the Industrial Relations Act, 1967, when he rejected the appellant's representations and therefore his decision became final and conclusive.

FEDERAL COURT.

G. Sivapragasam for the appellant.

W. S. W. Davidson for the respondents.

Azmi L.P.: We dismissed the appeal and here are my reasons for doing so.

The appeal is against the decision of the High Court at Ipoh on the question of law. As counsel for the plaintiff puts it:—

"Substantially the issue is whether subsection (5) of section 16A of the Industrial Relations Act 1967 is sufficiently wide to prohibit a dismissed employee who had unsuccessfully appealed to the Minister for relief under section 16A from seeking his remedies in an ordinary court of law."

The facts as disclosed in the statement of claim and statement of defence may be stated briefly as follows:—

The plaintiff was employed as a sweeper cum watchman in the Sekolah Rendah Jenis Kebangsaan (Tamil) in Gopeng, and his service was terminated by the defendants, the Chairman of the Board of Governors of the School and the Secretary of the same Board by a letter dated 28th September 1971 with effect from 30th November 1971. The plaintiff states that the decision to dismiss him was without reason and was not done in good faith. He therefore asked the court for a declaration that the said dismissal was wrongful. He also claimed for all arrears of salary from the date of dismissal to the date of reinstatement be paid to him. The defendant denied that the plaintiff was wrongfully dismissed. They pointed out *inter alia* that the plaintiff had made representations under section 16A of the Industrial Relations Act 1967 (hereinafter referred to as the Act) for his reinstatement in his former employment and the Minister for Labour (hereinafter referred to as the Minister) after referring the matter of the Commissioner for Industrial Relations, rejected the plaintiff's representations and the plaintiff was informed of this by a letter dated 23rd February 1972.

On 5th June 1972, plaintiff filed this suit. On 19th June 1972 the defendants filed their statement of defence and two days later applied to the court by summons in chambers for an order that the statement of claim be struck out on the grounds that the matter has been considered and rejected by the Minister under section 16A of the Act.

Before us counsel for the plaintiff maintained that in rejecting plaintiff's representations pursuant to subsection (4) of section 16A the Minister had not in law made a decision with the result that subsection (5) of section 16A will not apply. Subsection (5) reads as follows:—

"(5) The decision of the Minister on any representations made under this section shall be final and conclusive and shall not be challenged in any court or in a court established under this Act."

On this point the learned trial judge expressed his view as follows:

"It is further submitted on behalf of the plaintiff that under section 16A there is no power expressly given to the Minister to decide that the workman has been justifiably dismissed. In my view it is not necessary to express in the section every sort of finding that the Minister may make. It is implied that the Minister may come to any finding as he thinks proper depending on the facts of each particular case, and in my view any finding which the Minister make is a 'decision' within the scope of subsection (5)."

With respect I agree with the view expressed by the learned trial judge. It is not disputed that under section 16A the Minister may not only make an order of reinstatement but that he may also refuse to do so. We must assume that in this case he has exercised his discretion properly and he has therefore in rejecting the workman's representations considered the facts of the case. It is not suggested that in this case the Minister had declined to determine the question; in fact he had determined the question and decided to reject the workman's representations. In my view, the Minister had made a decision for the purpose of subsection (5) when he rejected plaintiff's representations with the result that his decision has become final and conclusive.

It is lastly argued before us that in view of the definition of the word "court" in section 2 of the Act, the words "any court" in section 16A(5) should only refer to the Industrial Court. Again in section 29(3) (a) the words "court of law" are used to distinguish it from the Industrial Court. It is true that the legal draftsman should have employed the words "court of law" instead of just the word "court", but in my view in the clause "and shall not be challenged in any court or in a court established under this Act" the words "any court" must be intended to refer to a court of law, and the word "or" must be construed disjunctively. This ground also must fail.

I would therefore dismiss the appeal with costs and that the order of the court below be confirmed. The deposit of $500 made by the plaintiff/appellant in reference to this appeal will be paid to respondents on account of their taxed costs.

Gill F.J.: With respect I agree with the reasons given by the learned Lord President for the dismissal of this appeal.

Ong Hock Sim F.J.: I am in agreement with the Lord President that this appeal be dismissed with costs.

Section 16A(2) of the Industrial Relations Act, 1967 enacts:

"(2) The Minister may, before making a *decision* on such representations, request the Commissioner to enquire into the dismissal and report whether in his opinion the dismissal is *without just cause or excuse* and in such an enquiry the workman may be represented by his trade union."

Subsection (5) goes on to say:

"(5) The *decision* of the Minister on any representations made under this section shall be final and conclusive and shall not be challenged in any court or in a court established under this Act."

It was admitted that the Minister, pursuant to subsection (2), directed the Commissioner for Industrial Relations to enquire into the dismissal. It was admitted also that after conclusion of the inquiry, and I assume, a report thereon, a letter dated February 13, 1972 was sent to the effect that the Minister "after deep consideration ... has *decided* under the provisions of section 16A of the Industrial Relations Act, 1967, that your appeal against termination of your services from Sekolah Rendah Jenis Kebangsaan (Tamil) be rejected." I cannot find, if section 16A is applicable, how there can be room for doubt that the Minister had made a decision.

I am somewhat doubtful however that section 16A has any application in regard to this case. The long title to the Act is "An Act to provide for the regulation of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom." As Lord Moulton

said in *Vacher & Sons* v. *London Society of Compositors*: [1]

"The title of an Act is undoubtedly part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope."

Section 16A has reference to "his trade union" in subsections (2) and (3). Clearly, and particularly where it is placed in Part V headed "Conciliation", it should have some bearing on some dispute between the workman and his employer. Under the Singapore Act, the employee has to make his representations "through his trade union" (*vide* section 35 of the Industrial Relations Act, Cap. 124). The appellant, a sweeper cum watchman in a Tamil school, is in my view more correctly classified as a "labourer" under the Employment Ordinance than as a "workman" under the Industrial Relations Act.

It has been urged also that "any court" in subsection (5) could only refer to a court established under the Act. I do not agree. Appearing before "a court established under this Act", notwithstanding that the words "court of Law" were used in section 29(3), I am of opinion that to accept that construction would be to offend the rule against redundancy. It was unfortunate perhaps that by an oversight the form adopted in section 29(3) was not followed. I favour the meaning given to "court" in section 3 of the Interpretation Act, 1967 and, in the absence of any words of limitation, the word "court" should be construed to refer to "any court" of competent jurisdiction.

There is one other observation I would like to make. It was not challenged by the appellant that his services were terminated on "2 months notice commencing from 1 October, 1971 to 30 November, 1971... in accordance with the agreement made ... on 1st May, 1966". Allegations of misconduct or of just cause or excuse for dismissal, are not required to justify dispensation of services pursuant to terms of a contract of employment. The Employment Ordinance of 1955 is unequivocal in this respect (*vide* sections 13(1) and 14(1)). I doubt that the Minister has power to order reinstatement in such case, in the absence of specific words in the legislation that this right of an employer to dismiss an employee has been curtailed or restricted. From the first step in this action, it is apparent that it should be struck out under Order 25 rule 4 on the ground that the statement of claim disclose not only *no reasonable cause of action* but *no cause of action* as it is quite inconceivable how the appellant can on the facts contend he had been *wrongfully dismissed.*

Appeal dismissed.

Solicitors: *Thevin, Chandran & Siva; Lewis & Co.*

SUN MAN TOBACCO CO. LTD. v. GOVERNMENT OF MALAYSIA

[F.C. (Azmi L.P., Gill and Ong Hock Sim F.JJ.)
October 6, 1973]
[Ipoh — Federal Court Civil Appeal No. 52 of 1973]

Income Tax — Claim by Government for payment of income tax — Application to sign final judgment — Whether taxpayer entitled to defend on contention that no tax at all is due — Income Tax Act, 1967, ss. 106 and 142.

The appellant had appealed against the judgment of the High Court giving leave to the respondent to sign final judgment against the appellant for the sum of $1,320,440.15 cts. alleged to be income tax due from the appellant. It was argued on the appeal that section 106(3) of the Income Tax Act, 1967 (which provides that in any proceedings under the section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed under appeal or incorrectly increased) did not apply in any case where the taxpayer contends that no tax whatever is due by him.

Held: the learned trial judge was right in giving leave to the respondent to sign final judgment and in holding that if the taxpayer wished to dispute that the amount of tax sought to be recovered was excessive, incorrectly assessed, under appeal or incorrectly increased, he has to do so by way of appeal to the Special Commissioners.

Cases referred to:-

(1) *Jacobs* v. *Booth's Distillery Co.* (1901) 85 L.T. 262.
(2) *Runnacles* v. *Mesquita* (1876), 1 Q.B.D. 416.
(3) *A.B.C.* v. *Comptroller of Income Tax, Singapore* [1959] M.L.J. 162, 166.
(4) *Comptroller of Income Tax* v. *R.S.T.* [1962] M.L.J. 216.
(5) *Comptroller of Income Tax* v. *A. Co. Ltd.* [1966] 2 M.L.J. 282, 284.
(6) *Comptroller of Income Tax* v. *A.B.* and *Comptroller of Income Tax* v. *C.D. Ltd.* [1967] 1 M.L.J. 11.
(7) *Comptroller-General of Inland Revenue, Malaysia* v. *Weng Lok Mining Co. Ltd.* [1969] 2 M.L.J. 98.
(8) *Government of Malaya* v. *D.C.* [1973] 1 M.L.J. 161.
(9) *Comptroller-General of Inland Revenue* v. *N.P.* [1973] 1 M.L.J. 165.

FEDERAL COURT.

W. E. Balasingham for the appellant.

Mohamed Nizar bin Idris (Senior Federal Counsel) for the respondent.

Azmi L.P.: This is an appeal against the judgment of the High Court at Ipoh giving leave to the plaintiff, Government of Malaysia, to sign final judgment against the defendant company, for the sum of $1,320,440.15 cts, alleged to be additional income tax and increases on that additional income tax imposed under the law against the defendant company for the years of assessment 1960 to 1971.

The writ in this suit was duly served on the defendant and the defendant entered appearance on 31st October 1972. It filed its defence on 7th December 1972. The defence denied that it was liable to pay any additional income tax or increases, assessed or imposed against it. It also contended that section 106(3) of the Income Tax Act 1967 was of no assistance since the defendant company's plea was that no tax whatsoever was due by it to the plaintiff. It went on to maintain that the certificate signed by the Director-General under section 142(1) of the Income Tax Act was merely rebuttal evidence.

The plaintiff, 13 days later applied for leave to sign final judgment against the defendant. The application was heard by the Senior Assistant Registrar on 18th January 1973 and she gave leave to sign final judgment as claimed. The defendant appealed to the judge. The learned judge gave leave to defend on condition that the defendant deposited the amount claimed in court before the 30th April 1973, and when defendant failed to do so the learned judge subsequently restored the order of the Senior Assistant Registrar. Against that judgment the defendant company appealed to this court.